



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 2, 1998

Mr. Roger Lee
Attorney and Counselors
Law Offices of Roger Lee
1401 Holliday Street
Wichita Falls, Texas 76301

OR98-2102

Dear Mr. Lee:

On behalf of the Wichita Falls Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117698.

The school district received a request for "a list of names of WFISD teachers recently suspended or removed from their duties and the reason for the suspension." You state that there is no such list and maintain that the act does not require the school district to create information that does not exist. You also invoke section 552.102 of the Government Code.¹

Information about public employees' job performance or the reasons for their dismissal, demotion, promotion or resignation are generally not excepted from disclosure on privacy grounds. See Open Records Decision Nos. 444 (1986), 405 (1983). The public has a legitimate interest in the activities of public employees. Thus, the identity of school district teachers who were recently dismissed or demoted and the reasons for such dismissal or demotion generally are not excepted from public disclosure based on section 552.102 of the Government Code.

¹Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

However, here, the requestor has asked for the information about dismissed or demoted teachers in the form of a list. You are correct in stating that the act does not require the school district to create the list. *See* Open Records Decision No. 555 (1990). Nevertheless, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). We therefore believe that the school district must respond accordingly.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 117698

cc: Mr. Scott Coppenbarger
KFDX
P. O. Box 4888
Wichita Falls, TX 76308
(w/o enclosures)